

## **Senate Bill No. 930**

### **CHAPTER 649**

An act to amend Sections 12301.25, 12301.6, and 12305.86 of, and to repeal Sections 12305.73 and 12305.85 of, the Welfare and Institutions Code, relating to public social services.

[Approved by Governor October 9, 2011. Filed with  
Secretary of State October 9, 2011.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

SB 930, Evans. In-home supportive services: enrollment and fingerprinting requirements.

Existing law provides for the county-administered In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons are provided with services in order to permit them to remain in their own homes and avoid institutionalization. Existing law authorizes services to be provided under the IHSS program either through the employment of individual providers, a contract between the county and an entity for the provision of services, the creation by the county of a public authority, or a contract between the county and a nonprofit consortium. Existing law requires a county, public authority, or nonprofit consortium, as applicable, to conduct an investigation of the qualifications and background of an IHSS provider applicant, including specified criminal background checks.

This bill would require the county, public authority, or nonprofit consortium to send the State Department of Social Services a copy of the state-level criminal offender record information search response that is provided to that entity by the Department of Justice for any individual who has requested an appeal of a denial of placement on the registry of IHSS personnel or denial of eligibility to provide supportive services to an IHSS recipient.

Existing law provides for the Medi-Cal program, administered by the State Department of Health Care Services, under which health care services are provided to qualified low-income persons. Under existing law, IHSS recipients who are eligible for the Medi-Cal program, are provided with personal care option services, as defined, in lieu of receiving these services under the IHSS program.

Under existing law, the State Department of Social Services, in consultation with the county welfare departments, is required to develop protocols and procedures for obtaining fingerprint images of all individuals who are being assessed or reassessed to receive supportive services, as specified. Existing law also requires the standardized time provider timesheet used to track the work performed by providers of in-home supportive services

to contain specified information, including, effective July 1, 2011, designated spaces for the index fingerprints of the provider and recipient.

This bill would delete the requirements pertaining to obtaining fingerprint images of IHSS recipients, and the requirement that the provider timesheet include spaces for provider and recipient fingerprints.

Existing law requires an IHSS provider enrollment form to be completed using the provider's physical residence address, and prohibits the use of a post office box address. Existing law also prohibits a county from mailing a provider's paycheck to a post office box address, unless the county approves a provider request to do so, as specified.

This bill would delete these requirements, and the prohibitions relating to the use of a post office box address by an IHSS provider.

*The people of the State of California do enact as follows:*

SECTION 1. Section 12301.25 of the Welfare and Institutions Code is amended to read:

12301.25. (a) Notwithstanding any other provision of law, the standardized provider timesheet used to track the work performed by providers of services under this article shall contain both of the following:

(1) A certification to be signed by the provider and recipient, verifying that the information provided in the timesheet is true and correct.

(2) A statement that the provider or recipient may be subject to civil penalties if the information provided is found not to be true and correct.

(b) A person who is convicted of fraud, as defined in subdivision (a) of Section 12305.8, resulting from intentional deception or misrepresentation in the provision of timesheet information under this section shall, in addition to any criminal penalties imposed, be subject to a civil penalty of at least five hundred dollars (\$500), but not to exceed one thousand dollars (\$1,000), for each violation.

SEC. 2. Section 12301.6 of the Welfare and Institutions Code is amended to read:

12301.6. (a) Notwithstanding Sections 12302 and 12302.1, a county board of supervisors may, at its option, elect to do either of the following:

(1) Contract with a nonprofit consortium to provide for the delivery of in-home supportive services.

(2) Establish, by ordinance, a public authority to provide for the delivery of in-home supportive services.

(b) (1) To the extent that a county elects to establish a public authority pursuant to paragraph (2) of subdivision (a), the enabling ordinance shall specify the membership of the governing body of the public authority, the qualifications for individual members, the manner of appointment, selection, or removal of members, how long they shall serve, and other matters as the board of supervisors deems necessary for the operation of the public authority.

(2) A public authority established pursuant to paragraph (2) of subdivision (a) shall be both of the following:

(A) An entity separate from the county, and shall be required to file the statement required by Section 53051 of the Government Code.

(B) A corporate public body, exercising public and essential governmental functions and that has all powers necessary or convenient to carry out the delivery of in-home supportive services, including the power to contract for services pursuant to Sections 12302 and 12302.1 and that makes or provides for direct payment to a provider chosen by the recipient for the purchase of services pursuant to Sections 12302 and 12302.2. Employees of the public authority shall not be employees of the county for any purpose.

(3) (A) As an alternative, the enabling ordinance may designate the board of supervisors as the governing body of the public authority.

(B) Any enabling ordinance that designates the board of supervisors as the governing body of the public authority shall also specify that no fewer than 50 percent of the membership of the advisory committee shall be individuals who are current or past users of personal assistance services paid for through public or private funds or recipients of services under this article.

(C) If the enabling ordinance designates the board of supervisors as the governing body of the public authority, it shall also require the appointment of an advisory committee of not more than 11 individuals who shall be designated in accordance with subparagraph (B).

(D) Prior to making designations of committee members pursuant to subparagraph (C), or governing body members in accordance with paragraph (4), the board of supervisors shall solicit recommendations of qualified members of either the governing body of the public authority or of any advisory committee through a fair and open process that includes the provision of reasonable written notice to, and a reasonable response time by, members of the general public and interested persons and organizations.

(4) If the enabling ordinance does not designate the board of supervisors as the governing body of the public authority, the enabling ordinance shall require the membership of the governing body to meet the requirements of subparagraph (B) of paragraph (3).

(c) (1) Any public authority created pursuant to this section shall be deemed to be the employer of in-home supportive services personnel referred to recipients under paragraph (3) of subdivision (e) within the meaning of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code. Recipients shall retain the right to hire, fire, and supervise the work of any in-home supportive services personnel providing services to them.

(2) (A) Any nonprofit consortium contracting with a county pursuant to this section shall be deemed to be the employer of in-home supportive services personnel referred to recipients pursuant to paragraph (3) of subdivision (e) for the purposes of collective bargaining over wages, hours, and other terms and conditions of employment.

(B) Recipients shall retain the right to hire, fire, and supervise the work of any in-home supportive services personnel providing services for them.

(d) A public authority established pursuant to this section or a nonprofit consortium contracting with a county pursuant to this section, when providing for the delivery of services under this article by contract in accordance with Sections 12302 and 12302.1 or by direct payment to a provider chosen by a recipient in accordance with Sections 12302 and 12302.2, shall comply with and be subject to, all statutory and regulatory provisions applicable to the respective delivery mode.

(e) Any nonprofit consortium contracting with a county pursuant to this section or any public authority established pursuant to this section shall provide for all of the following functions under this article, but shall not be limited to those functions:

(1) The provision of assistance to recipients in finding in-home supportive services personnel through the establishment of a registry.

(2) (A) (i) The investigation of the qualifications and background of potential personnel. Upon the effective date of the amendments to this section made during the 2009–10 Fourth Extraordinary Session of the Legislature, the investigation with respect to any provider in the registry or prospective registry applicant shall include criminal background checks requested by the nonprofit consortium or public authority and conducted by the Department of Justice pursuant to Section 15660, for those public authorities or nonprofit consortia using the agencies on the effective date of the amendments to this section made during the 2009–10 Fourth Extraordinary Session of the Legislature. Criminal background checks shall be performed no later than July 1, 2010, for any provider who is already on the registry on the effective date of amendments to this section made during the 2009–10 Fourth Extraordinary Session of the Legislature, for whom a criminal background check pursuant to this section has not previously been provided, as a condition of the provider's continued enrollment in the IHSS program. Criminal background checks shall be conducted at the provider's expense.

(ii) Upon notice from the Department of Justice notifying the public authority or nonprofit consortium that the prospective registry applicant has been convicted of a criminal offense specified in Section 12305.81, the public authority or nonprofit consortium shall deny the request to be placed on the registry for providing supportive services to any recipient of the In-Home Supportive Services program.

(iii) Commencing 90 days after the effective date of the act that adds Section 12305.87, and upon notice from the Department of Justice that an applicant who is subject to the provisions of that section has been convicted of, or incarcerated following conviction for, an offense described in subdivision (b) of that section, the public authority or nonprofit consortium shall deny the applicant's request to become a provider of supportive services to any recipient of in-home supportive services, subject to the individual waiver and exception processes described in that section. An applicant who is denied on the basis of Section 12305.87 shall be informed by the public

authority or nonprofit consortium of the individual waiver and exception processes described in that section.

(B) (i) Notwithstanding any other law, the public authority or nonprofit consortium shall provide an individual with a copy of his or her state-level criminal offender record information search response as provided to the entity by the Department of Justice if the individual has been denied placement on the registry for providing supportive services to any recipient of the In-Home Supportive Services program based on this information. The copy of the state-level criminal offender record information search response shall be included with the individual's notice of denial. Along with the notice of denial, the public authority or public consortium shall also provide information in plain language on how an individual may contest the accuracy and completeness of, and refute any erroneous or inaccurate information in, his or her state-level criminal offender record information search response as provided by the Department of Justice as authorized by Section 11126 of the Penal Code. The state-level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice.

(ii) The department shall develop a written appeal process for the current and prospective providers who are determined ineligible to receive payment for the provision of services in the In-Home Supportive Services program. Notwithstanding any other law, the public authority or nonprofit consortium shall provide the department with a copy of the state-level criminal offender record information search response as provided to the entity by the Department of Justice for any individual who has requested an appeal of a denial of placement on the registry for providing supportive services to any recipient of the In-Home Supportive Services program based on clause (ii) or (iii) of subparagraph (A). The state-level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the department in its written request.

(C) This paragraph shall not be construed to prohibit the Department of Justice from assessing a fee pursuant to Section 11105 or 11123 of the Penal Code to cover the cost of furnishing summary criminal history information.

(D) As used in this section, "nonprofit consortium" means a nonprofit public benefit corporation that has all powers necessary to carry out the delivery of in-home supportive services under the delegated authority of a government entity.

(E) A nonprofit consortium or a public authority authorized to secure a criminal background check clearance pursuant to this section shall accept a clearance for an applicant described in clause (i) of subparagraph (A) who has been deemed eligible by another nonprofit consortium, public authority, or county with criminal background check authority pursuant to either Section 12305.86 or this section, to receive payment for providing services pursuant to this article. Existence of a clearance shall be determined by verification through the case management, information, and payrolling system, that another county, nonprofit consortium, or public authority with

criminal background check authority pursuant to Section 12305.86 or this section has deemed the current or prospective provider to be eligible to receive payment for providing services pursuant to this article.

(3) Establishment of a referral system under which in-home supportive services personnel shall be referred to recipients.

(4) Providing for training for providers and recipients.

(5) (A) Performing any other functions related to the delivery of in-home supportive services.

(B) (i) Upon request of a recipient of in-home supportive services pursuant to this chapter, or a recipient of personal care services under the Medi-Cal program pursuant to Section 14132.95, a public authority or nonprofit consortium may provide a criminal background check on a nonregistry applicant or provider from the Department of Justice, in accordance with clause (i) of subparagraph (A) of paragraph (2) of subdivision (e). If the person who is the subject of the criminal background check is not hired or is terminated because of the information contained in the criminal background report, the provisions of subparagraph (B) of paragraph (2) of subdivision (e) shall apply.

(ii) A recipient of in-home supportive services pursuant to this chapter or a recipient of personal care services under the Medi-Cal program may elect to employ an individual as their service provider notwithstanding the individual's record of previous criminal convictions, unless those convictions include any of the offenses specified in Section 12305.81.

(6) Ensuring that the requirements of the personal care option pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code are met.

(f) (1) Any nonprofit consortium contracting with a county pursuant to this section or any public authority created pursuant to this section shall be deemed not to be the employer of in-home supportive services personnel referred to recipients under this section for purposes of liability due to the negligence or intentional torts of the in-home supportive services personnel.

(2) In no case shall a nonprofit consortium contracting with a county pursuant to this section or any public authority created pursuant to this section be held liable for action or omission of any in-home supportive services personnel whom the nonprofit consortium or public authority did not list on its registry or otherwise refer to a recipient.

(3) Counties and the state shall be immune from any liability resulting from their implementation of this section in the administration of the In-Home Supportive Services program. Any obligation of the public authority or consortium pursuant to this section, whether statutory, contractual, or otherwise, shall be the obligation solely of the public authority or nonprofit consortium, and shall not be the obligation of the county or state.

(g) Any nonprofit consortium contracting with a county pursuant to this section shall ensure that it has a governing body that complies with the requirements of subparagraph (B) of paragraph (3) of subdivision (b) or an

advisory committee that complies with subparagraphs (B) and (C) of paragraph (3) of subdivision (b).

(h) Recipients of services under this section may elect to receive services from in-home supportive services personnel who are not referred to them by the public authority or nonprofit consortium. Those personnel shall be referred to the public authority or nonprofit consortium for the purposes of wages, benefits, and other terms and conditions of employment.

(i) (1) Nothing in this section shall be construed to affect the state's responsibility with respect to the state payroll system, unemployment insurance, or workers' compensation and other provisions of Section 12302.2 for providers of in-home supportive services.

(2) The Controller shall make any deductions from the wages of in-home supportive services personnel, who are employees of a public authority pursuant to paragraph (1) of subdivision (c), that are agreed to by that public authority in collective bargaining with the designated representative of the in-home supportive services personnel pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code and transfer the deducted funds as directed in that agreement.

(3) Any county that elects to provide in-home supportive services pursuant to this section shall be responsible for any increased costs to the in-home supportive services case management, information, and payrolling system attributable to that election. The department shall collaborate with any county that elects to provide in-home supportive services pursuant to this section prior to implementing the amount of financial obligation for which the county shall be responsible.

(j) To the extent permitted by federal law, personal care option funds, obtained pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code, along with matching funds using the state and county sharing ratio established in subdivision (c) of Section 12306, or any other funds that are obtained pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code, may be used to establish and operate an entity authorized by this section.

(k) Notwithstanding any other law, the county, in exercising its option to establish a public authority, shall not be subject to competitive bidding requirements. However, contracts entered into by either the county, a public authority, or a nonprofit consortium pursuant to this section shall be subject to competitive bidding as otherwise required by law.

(l) (1) The department may adopt regulations implementing this section as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purposes of the Administrative Procedure Act, the adoption of the regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, these emergency

regulations shall not be subject to the review and approval of the Office of Administrative Law.

(2) Notwithstanding subdivision (h) of Section 11346.1 and Section 11349.6 of the Government Code, the department shall transmit these regulations directly to the Secretary of State for filing. The regulations shall become effective immediately upon filing by the Secretary of State.

(3) Except as otherwise provided for by Section 10554, the Office of Administrative Law shall provide for the printing and publication of these regulations in the California Code of Regulations. Emergency regulations adopted pursuant to this subdivision shall remain in effect for no more than 180 days.

(m) (1) In the event that a county elects to form a nonprofit consortium or public authority pursuant to subdivision (a) before the State Department of Health Care Services has obtained all necessary federal approvals pursuant to paragraph (3) of subdivision (j) of Section 14132.95, all of the following shall apply:

(A) Subdivision (d) shall apply only to those matters that do not require federal approval.

(B) The second sentence of subdivision (h) shall not be operative.

(C) The nonprofit consortium or public authority shall not provide services other than those specified in paragraphs (1), (2), (3), (4), and (5) of subdivision (e).

(2) Paragraph (1) shall become inoperative when the State Department of Health Care Services has obtained all necessary federal approvals pursuant to paragraph (3) of subdivision (j) of Section 14132.95.

(n) (1) One year after the effective date of the first approval by the department granted to the first public authority, the Bureau of State Audits shall commission a study to review the performance of that public authority.

(2) The study shall be submitted to the Legislature and the Governor not later than two years after the effective date of the approval specified in subdivision (a). The study shall give special attention to the health and welfare of the recipients under the public authority, including the degree to which all required services have been delivered, out-of-home placement rates, prompt response to recipient complaints, and any other issue the director deems relevant.

(3) The report shall make recommendations to the Legislature and the Governor for any changes to this section that will further ensure the well-being of recipients and the most efficient delivery of required services.

(o) Commencing July 1, 1997, the department shall provide annual reports to the appropriate fiscal and policy committees of the Legislature on the efficacy of the implementation of this section, and shall include an assessment of the quality of care provided pursuant to this section.

(p) (1) Notwithstanding any other law, and except as provided in paragraph (2), the department shall, no later than January 1, 2009, implement subparagraphs (A) and (B) through an all-county letter from the director:

(A) Subparagraphs (A) and (B) of paragraph (2) of subdivision (e).

(B) Subparagraph (B) of paragraph (5) of subdivision (e).



(2) The department shall, no later than July 1, 2009, adopt regulations to implement subparagraphs (A) and (B) of paragraph (1).

(q) The amendments made to paragraphs (2) and (5) of subdivision (e) made by the act that added this subdivision during the 2007–08 Regular Session of the Legislature shall be implemented only to the extent that an appropriation is made in the annual Budget Act or other statute, except for the amendments that added subparagraph (D) of paragraph (2) of subdivision (e), which shall go into effect January 1, 2009.

SEC. 3. Section 12305.73 of the Welfare and Institutions Code is repealed.

SEC. 4. Section 12305.85 of the Welfare and Institutions Code is repealed.

SEC. 5. Section 12305.86 of the Welfare and Institutions Code is amended to read:

12305.86. (a) Effective October 1, 2009, a county shall investigate the background of a person who seeks to become a supportive services provider and who is not listed on the registry of a public authority or nonprofit consortium pursuant to Section 12301.6. This investigation shall include criminal background checks conducted by the Department of Justice pursuant to Section 15660.

(b) No later than July 1, 2010, the county shall complete a criminal background check pursuant to subdivision (a) for a provider who is providing in-home supportive services prior to October 1, 2009, and who is not listed on a public authority or nonprofit consortium registry, as a condition of the provider's continued enrollment in the IHSS program. Criminal background checks shall be conducted at the provider's expense.

(c) (1) Upon notice from the Department of Justice that a prospective or current provider has been convicted of a criminal offense specified in Section 12305.81, the county shall deny or terminate the applicant's request to become a provider of supportive services to any recipient of the In-Home Supportive Services program.

(2) Commencing 90 days after the effective date of the act that adds Section 12305.87, and upon notice from the Department of Justice that an applicant who is subject to the provisions of that section has been convicted of, or incarcerated following conviction for, an offense described in subdivision (b) of that section, the county shall deny the applicant's request to become a provider of supportive services to any recipient of in-home supportive services, subject to the individual waiver and exception processes described in that section. An applicant who is denied on the basis of Section 12305.87 shall be informed by the county of the individual waiver and exception processes described in that section.

(3) Notwithstanding any other law, the county shall provide an individual with a copy of his or her state-level criminal offender record information search response as provided to the county by the Department of Justice if the individual has been denied eligibility to provide supportive services to any recipient of the In-Home Supportive Services program based on this information. The copy of the state-level criminal offender record information

search response shall be included with the individual's notice of denial. Along with the notice of denial, the county shall also provide information in plain language on how an individual may contest the accuracy and completeness of, and refute any erroneous or inaccurate information in, his or her state-level criminal offender record information search response as provided by the Department of Justice as authorized by Section 11126 of the Penal Code. The state-level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice.

(4) The department shall develop a written appeal process for the current and prospective providers who are determined ineligible to receive payment for the provision of services under the In-Home Supportive Services program. Notwithstanding any other law, the county shall provide the department with a copy of the state-level criminal offender record information search response as provided to the county by the Department of Justice for any individual who has requested an appeal based upon a denial of eligibility to provide supportive services to any recipient of the In-Home Supportive Services program pursuant to Sections 12305.81 and 12305.87. The state-level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice.

(d) This section shall not be construed to prohibit the Department of Justice from assessing a fee pursuant to Section 11105 or 11123 of the Penal Code to cover the cost of furnishing summary criminal history information.

(e) A county authorized to secure a criminal background check clearance pursuant to this section shall accept a clearance for an individual described in subdivision (a) or (b) who has been deemed eligible by another nonprofit consortium, public authority, or county with criminal background check authority pursuant to either Section 12301.6 or this section, to receive payment for providing services pursuant to this article. Existence of a clearance shall be determined by verification through the case management, information, and payrolling system, that another county, nonprofit consortium, or public authority with criminal background check authority pursuant to Section 12301.6 or this section has deemed the current or prospective provider to be eligible to receive payment for providing services pursuant to this article.

(f) The department shall seek federal financial participation, to the extent possible, to cover any costs associated with this section.